

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of T.E.K., K.A.K., R.D.K., R.F.K.,
and G.C.K., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CARLA NOWAK,

Respondent-Appellant.

UNPUBLISHED

August 21, 2007

No. 274228

Otsego Circuit Court

Family Division

LC No. 05-000028-NA

Before: Bandstra, P.J., and Cavanagh and Jansen, JJ.

PER CURIAM.

Respondent, Carla Kirk, appeals as of right the termination of her parental rights to her five minor children under MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm.

On March 23, 2005, the Otsego County Department of Human Services (DHS) filed a petition alleging abuse and neglect with regard to these minor children. The allegations included that respondent had dropped the children off at a homeless shelter where their father was staying, even though he was not there at the time, and left. She provided no address or phone number where she could be reached. The petition further averred that several services had been offered to the family in the past, including Northern Family Intervention Services, Prevention with DHS, group therapy, Health Department, rent assistance, state paid daycare assistance, Community Mental Health, and food pantry referral and diapers. At the inquiry hearing, the father, Roger Kirk, confirmed that he had the children, was living in a homeless shelter, and did not know where respondent was living. Respondent appeared at the continued inquiry hearing and requested a court-appointed attorney. The petition was authorized and the probable cause determination waived.

¹ Roger Kirk's parental rights to the five minor children were also terminated but he is not a party to this appeal.

Subsequently, the children were placed with David and Misty Heidman, Roger's brother, because neither of the children's parents worked or had appropriate housing. At the May 11, 2005, adjudication hearing, both parents admitted that they had each, separately, lived at the homeless shelter and both admitted that they did not have adequate housing in which to care for the children. Respondent also admitted that on or about March 1, 2005, she had dropped the children off to be with their father because she did not have adequate housing, was planning to quit her job and move out of the area, and failed to leave an address or phone number where she could be reached. Following the adjudication hearing, the court accepted jurisdiction and scheduled a dispositional hearing.

The dispositional hearing was held on June 15, 2005, at which time the court ordered compliance with the parent-agency agreement and supervised visitation in light of allegations² that respondent had fought with her boyfriend in front of the children despite orders that visitations were not to involve her boyfriend. On November 23, 2005, a show cause hearing was conducted because of allegations that respondent was not participating in her visitations alone as ordered.

On December 14, 2005, a review hearing was conducted at which time the DHS requested that parental visitation be suspended because of continual violations of the court orders, including inappropriate discussions during respondent's visitations, and because of minimal compliance with the parent-agency agreement, including the failure to secure housing. The court agreed to suspend face-to-face visitations and limited contact to telephone calls. The court warned both parents that a permanency planning hearing would be conducted in April at which time termination of their parental rights would be considered if progress was not made with regard to the disputed issues. At a review hearing on January 17, 2006, the court lifted the suspension of face-to-face visitations and allowed supervised, but separate, visitations.

On March 21, 2006, the permanency planning hearing was conducted. The first witness was Joanne Lawrason, a parent aid for DHS who provided parent education classes for respondent and Roger and who provided the supervision for their visitations. Lawrason testified that, although both parents took the classes, they did not follow through in their actions with the children. For example, during visits with respondent there was inappropriate activity, inappropriate talk, respondent lost her temper, and was unable to prioritize the children's needs. Lawrason had been involved with this family off and on for years and, most recently since June of 2005. When asked if the court should grant unsupervised visits she replied, "absolutely not."

Next, David Heidman testified. He had custody of six of his brother's children.³ He testified that the children indicated that they would like to be with their parents but they did not believe that their parents would change with regard to moving around so they wanted to stay with him. Heidman testified that when the children came home from visits with their parents, they came home with attitudes against each other, they did not want to talk, or play for a couple

² Respondent admitted at a show cause hearing that she did have a fight with her boyfriend in front of the children.

³ A seventh child was placed in a different foster home.

days. The oldest boy did not want to visit with either parent. But one of the boys wanted to live with respondent. Heidman did not believe either parent could take care of the children.

Thereafter, the court adjourned the permanency planning hearing and scheduled a review hearing for April 18, 2006. The court addressed the parties, indicating that reunification possibilities would be considered and stressed their need to continue counseling and work on the parent-agency agreement. The court intimated that return of at least the four youngest children to respondent, who had housing, after the school year ended was a real possibility—that was the inclination of the court at that point in time. But, the court warned respondent not to discuss this matter with the children.

At the April hearing, the court ordered the children to have four weeks of supervised and then four weeks of unsupervised visits with respondent which would then progress to overnight visits, and then maybe return placement at the end of June. The court indicated that Families First and Northern Family Intervention Services “will be placed in the home,” respondent was to continue counseling, a play therapist would begin working with the children, and respondent, her husband,⁴ and the children would meet with DHS once a week. The court again warned respondent that it was vital that she take advantage of the opportunity in light of the possibility of termination.

Respondent did not appear at the June 20, 2006, review hearing. She was the aggressor in a domestic violence incident against her husband, Jerry Nowak. Nowak’s children witnessed the assault, but respondent’s children did not—although they had in the past. Respondent moved out of the house and was without housing again. At the time of the incident, parenting time with her children had been extended and they were about to begin overnight stays. Therefore, the court ordered that the permanency planning hearing, that had previously been adjourned, be scheduled for continuation. The court ordered that visitations with the children be supervised.

On July 25, 2006, the permanency planning hearing recommenced. The first witness was Thomas Chevalier, respondent’s psychologist. Chevalier performed psychological evaluations on Roger and respondent. He also counseled respondent. He could not recommend that the children be returned to either respondent or Roger at that time. The last time he heard from respondent was June 23, 2006, when she cancelled an appointment and never came back. Thereafter, the court ordered DHS to file a termination petition.

After the petition seeking termination of both respondent’s and Roger’s parental rights was filed, a hearing was held on October 10, 2006. The witness testimony was consistent with the above discussion. Further, Mark Sorenson, the DHS case worker, testified. He testified that housing was initially the biggest concern with regard to the parent-agency agreement and, fifteen months later, they still did not have appropriate housing. Respondent lived with her mother, had significant anger management issues, had a history of being physically aggressive with her children and her husband, and lacked the ability to control herself. Respondent had been able to maintain some type of employment during this matter. But, just when the court was considering

⁴ The “boyfriend” referenced above became respondent’s husband during these proceedings.

returning the children to respondent, she had her second domestic violence altercation—which involved a baseball bat—with her husband. Sorenson reminded the court that the DHS had been working with this family for years and years—since the oldest (18 years old) child was young. He opined that there was no more to offer them; “they’ve had what we’ve had to offer, and not just in the last year and a half, but over and over, and it’s just not coming together.” He felt that both parents understood what they needed to do to get their children back but just were not capable of doing it. Sorenson was requesting termination because the children were in a stable environment, which neither parent could provide, and the children were doing very well.

Both respondent and Roger testified fairly consistent with the earlier discussion. Following closing arguments, the court took the matter under advisement. On October 26, 2006, the court issued its opinion and order, terminating the rights of respondent and Roger as to five of their minor children. The court concluded that termination was proper under MCL 712A.19b(3)(i) because at least 182 days had elapsed since the initial dispositional order and the conditions that led to adjudication—lack of housing and emotional instability—continued to exist. There was no reasonable likelihood that these conditions would be rectified within a reasonable time considering the age of the children, particularly because respondent had no plan in place to secure housing and had not significantly invested in or benefited from counseling.

The court also concluded that termination was proper under MCL 712A.19b(3)(g) because respondent failed to provide proper care and custody of the children and there was no reasonable expectation that she would be able to within a reasonable time considering the age of the children as evidenced by the facts discussed above.

Finally, the court concluded that termination was also proper under MCL 712A.19b(3)(j) because there was a reasonable likelihood, based on respondent’s history of domestic violence against her husband, her suicide attempt, and the history of violence against the children that the children would be harmed if returned to respondent. Further, the court concluded that there was nothing in the record to indicate that termination was not in the best interests of the children. This appeal by respondent followed.

First, respondent argues that the trial court did not consider the fact that DHS failed to provided her with adequate services—the lack of which prevented her from being able to rehabilitate herself—before terminating her parental rights. We disagree.

The purported failure to provide reasonable services directed toward reunification challenges the sufficiency of the evidence. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). “In general, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *Id.* at 542, quoting MCL 712A.18f(1), (2), and (4).

In this case, the record established that DHS had been providing services to respondent and her family for many, many years. Specifically, this time, DHS provided referrals for psychological evaluations and counseling, parenting classes, supervised visitations with the children, and other services. Respondent’s lack of suitable housing and her emotional instability led to the adjudication and these services, as well as others, were provided to assist respondent in a successful reunification. Nevertheless, respondent did not secure adequate housing, engaged in assaultive conduct, stopped attending counseling, attempted suicide, and continued to speak and

behave inappropriately in front of the children. We conclude from the record evidence that it is clear that respondent's failure to rehabilitate herself was not for lack of effort or services offered by the DHS. Thus, this issue is without merit.

Further, to the extent that respondent is arguing that termination under even one of the statutory grounds was not proven by clear and convincing evidence, we disagree. See MCL 712A.19b(3). As the trial court concluded, respondent failed to secure adequate housing and failed to make sufficient progress with regard to her emotional instability. Before coming within the jurisdiction of the court, respondent had lived in a homeless shelter and then left the homeless shelter, leaving her children to stay there with their father—who was not even present at the time. She planned on leaving Michigan and gave no contact information. Although respondent eventually married and was living in a house with her husband for some duration, because of assaultive conduct committed against her husband, respondent began living with her mother. She had no plan with regard to other housing. And, as discussed above, respondent had stopped counseling and continued to behave inappropriately with the children. In sum, the trial court's conclusions that clear and convincing evidence was presented to support the termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j) were not clearly erroneous. See *In re Trejo Minors*, 462 Mich 341, 355-356; 612 NW2d 407 (2000).

Finally, respondent argues that the trial court's conclusion regarding the children's best interests was clearly erroneous. We disagree. See MCL 712A.19b(5); *In re Trejo Minors*, *supra* at 356-357. The record revealed that the children had been with their aunt and uncle for over a year, were doing very well, were involved in various activities, and had progressed with regard to their social skills. Although they had expressed sadness and anger with regard to the termination of respondent's rights, the trial court's conclusion that termination was not clearly against the children's best interests was not erroneous.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen